

The Honorable Susan K. Serko
Hearing Date: July 19, 2019
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHEAL W. GARWICK and MATTHEW
A. GRANSTROM, individually and on behalf
of all those similarly situated,

Plaintiffs,

v.

VETERANS INDEPENDENT
ENTERPRISES OF WASHINGTON, a
Washington public benefit corporation,
DONALD HUTT, an individual, and GARY
PETERSON, an individual,

Defendants.

No. 18-2-09076-3

PLAINTIFFS' REPLY IN
OPPOSITION OF CONTINUANCE
OF TRIAL DATE

I. RELIEF REQUESTED

Plaintiffs seek an order denying Defendants' motion to continue trial date as it will delay and potentially deny justice for named Plaintiffs and the Certified Classes.

II. EVIDENCE RELIED ON

This reply relies on the Declaration of James B. Pizl in support of this reply, the exhibits thereto and the records and pleadings on file in this matter.

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III. ARGUMENT

A. Finances have been tight for Defendant VIEW because of what may be ongoing embezzlement by at least one board member, Rosemary Hibbler.

In this motion, Defendants indicate that “*some funds* have been siphoned off by *an employee* for what appear to be personal expenses”. *Emphasis added.* If not outright misleading, the statement is an understatement at best. First of all, “some funds” amount to over \$325,000 over a period of 8 months in suspicious banking transactions. *See Pizl Decl. 1, Exh. A.*

Second, the “employee” referred to is Rosemary Hibbler AKA Rosemary Barnes AKA Rosemary Paragoud AKA Rosemary Smith, a known felon with ten felony convictions for financial crimes and other felonies of dishonesty and who, by her own account in her deposition in this case was fired from more than one job prior to being employed by VIEW after “being accused” of such things as forgery and theft. In those cases, Hibbler indicated she was only fired from those jobs and was never prosecuted. Hibbler has an outstanding civil judgment against her in excess of \$250,000 related to her employment immediately prior to her employment at VIEW.

Ms. Hibbler is also not just an “employee”. She flaunts the title Chief Operations Officer (“COO”) and Defendants indicate she is a third board member arguably keeping VIEW in minimal compliance to be a Public Benefit Corporation. Finally, at the time of her deposition in this case, Hibbler indicated she was the only check signer on the only open VIEW bank account at Chase.

Based on his unilateral refusal to act to get rid of Hibbler, it could be inferred that Gary Peterson is somehow involved in the impropriety mentioned by Defendants in their motion. In February, 2017, following an investigation, his own daughter, Karin Catey and others expressed serious concern that Ms. Hibbler had forged checks and had double paid herself when processing payroll. It was unanimous that Hibbler needed to be fired at that time and it appeared that the plan to fire her was in place. However, in an abrupt change of heart, Mr. Peterson unilaterally decided firing Ms. Hibbler was overkill and would instead just take her out of control of the payroll system instead of firing her. *See Taylor Decl. Exh. B, Dkt 21, Exh.B.* Similarly, when presented with

1 documentation of suspicious transaction after suspicious transaction during his deposition in this
2 case, he indicated that he planned to do nothing related to Ms. Hibbler's duties and employment.

3 When presented with many of the same suspicious transactions in her deposition in this
4 case, Hibbler could not recall and didn't remember the circumstances surrounding most of them.
5 Although she admitted that she frequented casinos, she couldn't account for the tens of thousands
6 of dollars in withdrawals from the VIEW bank accounts at those casinos. Although she admitted
7 her rent was \$2,000 and that it was paid via Google Pay, she didn't know, couldn't remember or
8 couldn't account for why there were Google Pay charges for \$2,000 month after month out of
9 VIEW's bank account. When asked if records could be provided to support the suspicious
10 transactions, she indicated all the 2018 and many of the 2019 records had been stolen and that she
11 would be unable to provide any records to document the business purpose of any of the suspicious
12 transactions. Later in the deposition, Hibbler started answering, "I plead the fifth" and continued
13 to do so in response to almost all remaining questions about suspicious transactions.

14 **B. Finances being tight is not good cause to continue the trial date**

15 Lack of funds to pay an attorney could be argued by any defendant to stall and delay the
16 litigation process. This was even argued by these Defendants in Plaintiffs' motion to compel
17 hearing in January, 2019. In this case, however, finances being tight was Defendants own doing.
18 Had they done even a minimal inquiry, Peterson and Hutt would have known all about Ms.
19 Hibbler's ten felony convictions for crimes of dishonesty and her trail of tears at her former jobs
20 after being "accused of" other dishonest acts. They acquiesced to or conspired with Hibbler despite
21 so many red flags raised by others. With Peterson and Hutt ratifying any and all suspicious
22 transactions and actions, Hibbler gradually grabbed what amounts to complete control of VIEW
23 and its assets violating the letter and the spirit of the laws requiring oversight for public benefit
24 corporations. Plaintiffs had nothing to do with Hutt and Peterson's recklessness causing Hibbler's
25 rise to power and it is offensive to Plaintiffs that Defendants dare to claim that keeping the current
26 trial date would prejudice them when it is their own actions or inactions that caused their issues.

1 It is Plaintiffs who would be prejudiced by continuing the trial date, not only by justice
2 being delayed, but also by the great potential for justice being denied altogether. Hibbler and
3 Peterson have indicated they (VIEW) have already maneuvered to remove Department of
4 Commerce restrictions on the remaining VIEW houses, have already leveraged them with loans
5 and are attempting to leverage them with even more loans, presumably until all equity is gone.
6 Plaintiffs fear that moving the trial date will do nothing but enable Hibbler, Hutt and Peterson to
7 misappropriate or squander the remaining VIEW assets leaving nothing for Plaintiffs to recover.

8 C. Notices to Class Members

9 The form of notice to class members was approved by the court on June 28, 2019 and
10 notices are scheduled to be sent out to class members this week, the week of July 1, 2019. Plaintiffs
11 can see no reason why opt outs would manifest additional discovery needs and warrant
12 continuance of the trial date. Plaintiffs believe a better approach is to wait and see if issues arise.

13 D. Counterclaims

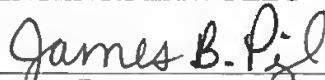
14 It is Plaintiffs' position that the counterclaims set forth in their answer are invalid as
15 counterclaims because no filing fee has been paid. Instead, Plaintiffs' position is that those
16 allegations are simply defenses of offset that require no answer. However, to resolve this potential
17 dispute, Plaintiffs have filed an answer to the counterclaims. Plaintiffs anticipate their answer will
18 generate no additional discovery requests that would warrant continuance of the trial date.

19 IV. CONCLUSION

20 For the aforementioned reasons, the trial date should remain October 21, 2019 and
21 Defendants' motion to continue the trial date should be denied.

22 DATED This the 1st day of July, 2019

23 ENTENTE LAW PLLC

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25 James B. Pizl, WSBA #28969

26 *Attorney for Plaintiffs and Certified Classes*

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CERTIFICATE OF SERVICE

I certify that I caused to be served in the manner noted below a copy of the foregoing Plaintiff's Motion for Summary Judgment on the following individual(s):

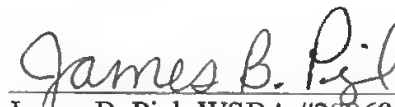
Counsel For Defense:

Richard H. Wooster, WSBA #13752
Kram & Wooster, P.S.
1901 South I St
Tacoma, WA 98405

- ☐ Via Facsimile
☐ Via Priority Mail
☐ Via Messenger
☒ Via Email Pursuant to Agreement
☐ Via EFiled/EService

rich@kjwmlaw.com

DATED: July 1, 2019, at Puyallup, Washington.


James B. Pizl, WSBA #28969

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